

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

MISSOURI-NATIONAL EDUCATION)	
ASSOCIATION,)	
)	
Petitioner,)	
)	
vs.)	Public Case No. 81-015
)	
BELTON SCHOOL DISTRICT,)	
)	
Respondent.)	

JURISDICTIONAL STATEMENT

This case appears before the State Board of Mediation upon the Missouri National Education Association (MNEA) filing a petition for certification as public employee representative of certain employees of the Belton School District (Employer). On September 11, 1981 a hearing was held in Belton, Missouri at which representatives of MNEA and the Belton School District were present. The case was heard by State Board of Mediation Chairman Mary Gant, Employer Member Herbert Shaw, and Employee Member Robert Missey. Because subsequent to the hearing employee member Missey's term expired, the case was submitted by transcript to new employee member Charles Yaeger. The State Board of Mediation is authorized to hear and decide issues concerning appropriate bargaining unit determinations by virtue of Section 105.525, RSMo 1979.

At the hearing the parties were given full opportunity to present evidence. The Board, after a careful review of the evidence, sets forth the following findings of fact and conclusions of law:

FINDINGS OF FACT

The Belton School District consists of one senior high school, one junior high school, four elementary schools and the district's central administrative office building.

Of the employees in question, four secretaries are assigned to the central administrative office. Additionally, each of the six school principals is assigned one secretary as are the two assistant principals.

Central Administrative Office Secretaries. Three of the four central office secretaries work in one, unpartitioned room located in the central administrative office building. The remaining secretary, who serves as a receptionist, is separated from the other three by a hallway. All four secretaries work closely with superintendents of the school district and the members of the board of education. The record indicates that each of the secretaries fill in for one another should the need arise.

One secretary (Joyce Halley) serves as treasurer of the board of education and is appointed to that position by the board. This secretary is responsible for depositing receipts as they come into the district. She also assists in the district's preparation for salary negotiations by projecting how a proposed increase in salary structure would affect the district's budget. Another secretary (Jean Boston) serves as secretary to the board of education. Her primary responsibility is the coordination of receipts and expenditures of the district in preparation for the annual audit. Further, her duties include the taking minutes of all school board meetings and processing all school board correspondence. Another secretary (Wilma Long) assigned to the central administrative office is responsible for the district's accounts payable, handling purchase orders by filing monthly payments as required by the school district. In addition, this secretary coordinates attendance reports from each of the individual schools, preparing the records so as to comply with a federal revenue program requirement. The fourth secretary (Alma Phillips) serves as the receptionist and secretary to the district superintendents. She types all correspondence originating in the central office. Occasionally, this secretary will also assist in projecting teacher salary proposals in preparation for the district's negotiations with the teacher's labor organization.

Secretaries Assigned to School Principals and Assistant Principals. Each of the six principals and two assistant principals within the school district has one secretary who assists in handling the clerical and administrative duties necessary to operate the school offices. The evidence adduced at the hearing indicates that the principals' and assistant principals' secretaries have similar, if not identical, duties. Each secretary is located in a large open area of the school's administrative office, adjacent to the principal's or assistant principal's office. The secretaries' main function is to keep attendance records, type correspondence, answer the telephone, and perform other general clerical duties.

The secretaries are also responsible for calling substitute teachers when the need arises. When a teacher is to be absent, the school secretary is notified. Each school maintains a list of all qualified substitute teachers. This list, drawn up by the central office, includes each substitute's name, phone number, and preference concerning subjects to be taught. When a teacher is absent, the secretary chooses a name from the list. If that person is unavailable, another substitute is called. If no substitute is available, the secretary has on occasion asked on-duty teachers if they can fill in during the hours they are not scheduled to teach. The record indicates that the secretary has some discretion in deciding who to call in as a substitute in that she is aware of substitutes who have not performed well in the past.

The secretaries are indirectly involved in the evaluation of teachers and non-certified personnel employed by the district. The secretaries type evaluations as dictated by the person doing the evaluation, either the principal or assistant principal. After the evaluation is reviewed by the teacher and principal, copies are filed by the secretary in the teacher's personnel file of the individual school and the central office. The personnel files contain all past evaluations, biographical data, any other matters concerning the teacher's credentials and work records. Considered highly confidential, only the principal, the assistant principal and their secretaries have access to these files.

Employee grievances rarely occur in the Belton School District, with most problems being dealt with on an informal basis. However, should a written grievance be filed, the secretary would be required to type any formal statements concerning the grievant as dictated by the principal or assistant principal.

Evidence adduced at the hearing established that the secretaries of the principals and assistant principals are cognizant of personnel matters involving both teachers and non-certified employees. The teachers of the school district belong to a labor organization and, therefore, are adversaries to the principal in that the principal of the school is the sole employer representative with whom the employees have daily contact. Because the principal is the employer's only representative present at each school, the principal must depend on his or her secretary concerning the resolution of personnel problems. The secretaries are often the first to know of problems and bring the matter to the principal's attention. For example, in one case a secretary suspected that a teacher's excuse for being absent was false. The principal was informed of the matter and a subsequent investigation confirmed the secretary's suspicion. In short, the secretaries provide valuable input to the principal concerning personnel matters.

CONCLUSIONS OF LAW

The Missouri National Association of Teachers (MNEA) filed a petition for certification as public employee representative of a bargaining unit consisting of approximately 4 school nurses, 16 "aides" including teacher-aides, a library aide, special education aides, a nurses' aide, and 16 clerical secretaries employed by the Belton School District (Employer). At the hearing, the parties stipulated to the inclusion in the bargaining of all of the above-mentioned personnel except for twelve secretarial positions. The Employer contends that those employees the secretaries to each of the six school principals, the two secretaries to each of the two assistant principals, and four secretaries assigned to the central administrative office-should be excluded from the bargaining unit because they are confidential employees.

This issue before the board is whether the allegedly confidential employees should be included in the bargaining unit. Section 105.510, RSMo 1979 allows certain public employees the right to form and join labor organizations and to present proposals to any public body. The statute does not define the word employee however, the term employee cannot be literally read to include every person on the payroll of a public body. Golden Valley Memorial Hospital v. Missouri State Board of Mediation, 559 S.W. 2d 581, 583 (Mo. App. 1977). Therefore, as stated in Golden Valley, it is the duty of the board to identify those employees whose duties involve acting directly or indirectly in the interest of the employer in relation to other employees.

In applying the above test the board has consistently excluded supervisors from bargaining units to clearly non-supervisory employees. Also, in Miscellaneous Drivers and Helpers Union Local 610 v. City of Arnold, Case No. 71-120, the board held that confidential employees are to be excluded from the bargaining unit.

The test applied by the board in Arnold and the test traditionally applied by the NLRB in determining whether an employee is a confidential employee to be excluded from the bargaining unit is whether the individual assists and acts in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations. B. F. Goodrich Company, 115 NLRB 722, 724 (1956). This test referred to as the labor-nexus test, was recently approved by the United States Supreme Court in NLRB v. Hendricks County, et al., 102 S.Ct. 216 (1981). However, this board finds the labor-nexus test too narrow to provide a workable basis by which the board can identify those employees whose interests are more closely allied to the public employer than to the rank and file employees. Therefore, this board adopts the position that an employee must be considered confidential, and thus not an "employee" under section 105.510 if there exist a confidential relationship between the employee and managerial or supervisory employees.

Applying this test to the facts of our case, it is clear that the four secretaries assigned to the central office are confidential employees. In fact, these employees would be considered confidential employees even under the more narrow labor-nexus test in that those secretaries work in a confidential capacity to the school superintendents and members of the board of education (obviously persons who formulate, determine and effectuate policies in the field of labor relations). Accordingly, the four central office secretaries are not "employees" within the meaning of section 105.510 and, therefore, must be excluded from the bargaining unit.

As for the secretaries of the principals and assistant principals, the board concludes that there exists a confidential relationship between the secretaries and their respective managerial employee (i.e. principal or assistant principal). Important to the board's decision is the fact that the secretaries work closely with the principal on a daily basis and occupy a position of trust upon which the principal must rely. To place the secretaries in the bargaining unit would create conflicting interests among the secretaries. They would have to remain loyal to their principal (i.e. employer) while having an interest in the well-being of the members of the proposed unit and the teacher's labor organization. Such conflicting interests would do disservice to both the employer and MNEA, which would in effect be representing persons closely allied with the employer. Consequently, the principal's and assistant principal's secretaries must be considered confidential employees to be excluded from the bargaining unit.

DECISION

It is the decision of the State Board of Mediation that an appropriate unit of employees is as follows:

"All clerical employees of the Belton School District, aides, school nurses; excluding supervisors, confidential secretaries, and all other employees of the Belton School District."

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation or a designated agent among the employees in the unit found appropriate, as early as possible, but no later than sixty (60) days from the date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the vacation or illness. Ineligible to vote are those employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible to vote shall vote whether (or not) they desire to be represented for the purpose of exclusive recognition by Petitioner, Missouri-National Education Association.

It is hereby ordered that the Respondent shall submit to the Chairman of the State Board of Mediation, as well as to the Petitioner, within fourteen (14) days from the date of receipt of this decision, an alphabetical list of the names and addresses of employees in the unit determined above to be appropriate who were employed during the designated payroll period.

Signed this 17th day of February, 1982.

(SEAL)

STATE BOARD OF MEDIATION

/s/ Mary L. Gant
Mary L. Gant, Chairman

/s/ Herbert Shaw
Herbert Shaw, Employer Member

/s/ C. J. Yaeger, Dissent Attached
Charles J. Yaeger, Employee Member

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CERTIFICATION

I hereby certify that I have read the full record, including all the evidence and exhibits.

/s/ C. J. Yeager

Charles J. Yeager, Employee Member

State Board of Mediation

State of Missouri)
) SS.
County of Jackson)

I, /s/ L. K. Weber, a Notary Public do hereby certify that on this 16th day of February, 1982, personally appeared before me /s/ C. J. Yeager, who, being first duly sworn, declared that all of the information contained herein above is true.

/s/ L. K. Weber

MY COMMISSION EXPIRES
L.K. WEBER
Notary Public - State of Missouri
Commissioned in Clay County
My Commission Expires April 18, 1982

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After reviewing the Briefs, Transcript, NLRB, V. Hendricks and other cases this Board member believes that is it possible that three Secretaries, Joyce Halley, Jean Boston and Alma Phillips should be excluded from the Bargaining Unit as they seem to pass the test for Confidential employees. I am also of the opinion that the remaining thirteen Secretaries should be included in the Bargaining Unit for in my opinion the do not meet the test for "Confidential Employees".

/s/ C. J. Yaeger
C. J. Yaeger,
Employee Member